

March 14, 1967

CONGRESSIONAL RECORD — SENATE

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Committee on the Judiciary; I wish to announce a change in the hearings on the Federal jury selection process.

The hearings on March 21, originally scheduled for 9:30 a.m., in room 4200 of the New Senate Office Building, will be changed to 2 p.m. of that same day in room 6226 of the New Senate Office Building. The hearings on March 22 and 29 will still be held as scheduled, at 9:30 a.m., in room 4200 of the New Senate Office Building.

NOTICE OF HEARING ON RIGHT OF PRIVACY ACT OF 1967

Mr. LONG of Missouri. Mr. President, on Monday, March 20, the Senate Subcommittee on Administrative Practice and Procedure, of which I am chairman, will begin hearings on S. 928, the Right of Privacy Act of 1967. There are many complex and detailed problems involved in considering legislation which would grant to every American citizen their right of privacy. Wiretapping and electronic eavesdropping, more often referred to as "bugging," is especially complex. Opinions in this area range from all-out bans on snooping to complete permissiveness by Federal, State, and local police.

Recently, Judge J. Edward Lumbard, chief judge of the U.S. Court of Appeals for the Second Circuit appeared before Senator McCLELLAN's Subcommittee on Criminal Laws and Procedures. The New York Times of Sunday, March 12, reprinted excerpts from this testimony. We intend to hear all sides of the issue; in fact, I have today invited Judge Lumbard to testify before my subcommittee, and give us the benefit of his educated views.

Mr. President, I ask unanimous consent to insert, at this point in the Record, the excerpts from the New York Times.

There being no objection, the excerpts were ordered to be printed in the Record, as follows:

ANOTHER OPINION—IN DEFENSE OF WIRETAPPING

The following are excerpts from the testimony last week of J. Edward Lumbard, Chief Judge of the U.S. Court of Appeals for the Second Circuit, before a Senate subcommittee considering wiretap legislation:

"Any proposals for expanding and clarifying the powers of law enforcement agencies must be considered in light of the fact that it has become more and more difficult for these agencies to secure sufficient evidence of crime to justify arrest, prosecution and conviction.

"First, decisions of the Supreme Court now require law enforcement agents to warn suspects who are in custody of their rights in such a way that those who otherwise would voluntarily speak are now virtually encouraged not to do so. Moreover, the requirement that, before any questioning, counsel must be available, if desired, and that counsel be furnished if the suspect cannot get counsel himself, prevents or postpones questioning at the very time that it would be most fruitful. Thus in many cases the most ready, the most authentic and the most natural means of getting information by the voluntary statement of the person best able to tell, is no longer available.

"Second, court decisions have made it impossible to secure testimony before grand juries and Government bodies where there

is any claim of Fifth Amendment privilege, however far-fetched it might be.

"Third, revolutionary developments in the speed and means of travel and communication have enabled organized crime to operate countrywide, secretly through agents who may be far removed, and in such ways that detection is not only difficult but almost impossible in view of present restrictions. At the same time it is now unlawful for law enforcement agencies to tap telephone wires and divulge what is thus obtained and the use of any electronic devices is being questioned.

"There is a fourth obstacle: the increasing reluctance of victims to come forward to complain and to testify. As law enforcement difficulties increase and the likelihood of successful prosecutions decreases, those who suffer from organized crime become more fearful of the consequences of speaking.

"In the light of today's crisis in law enforcement, the old arguments against wiretapping are no longer weighty.

"We cannot have effective law enforcement without running the risks of some invasion of privacy; no good citizen who places any value on living in an orderly and peaceful society where crime is under reasonable control should object to those occasional annoyances which sometimes are the by-product of a suitable police action.

"WIRETAPPING NECESSARY"

"If wiretapping by law enforcement agents is legalized because, as I believe, it is necessary, it will not be 'dirty business.' Those who oppose wiretapping have always relied heavily on the eloquent dissent of Justice Holmes in *Olmstead v. United States*, 277 U.S. 438, where the majority permitted the Government to use wiretap evidence to convict bootleggers despite the fact that the wiretapping was itself a crime in violation of laws of the State of Washington. Of course there was no federal law on the subject at the time.

"Justice Holmes called it 'dirty business' because the evidence was 'obtained and only obtainable by a criminal act,' i.e. a violation of state law, and he held that courts should exclude evidence obtained by a crime committed by the officers of the law.

"It seems clear that had there been a Federal law which permitted wiretapping, upon findings of the public necessity for such legislation, as S. 675 proposes, Justice Holmes would not have said what he did about wiretapping, even in 1928; it would not have been 'dirty business' had the law authorized it.

"It was Justice Holmes who wrote in 1880, 'The life of the law is not logic but experience.' The bootleggers whose convictions were affirmed in the *Olmstead* case in 1928 were public benefactors compared to the professional criminals of 1967.

"There is no dirtier business today than the business of organized crime; it rules by violence and terror; it victimizes the public and corrupts public officials. Every possible resource of Government should be used to expose and destroy it.

"COMMISSION'S RECOMMENDATIONS"

"The report of the President's Commission ends its discussion of electronic surveillance by pointing out that the 'present status of the law with respect to wiretapping and bugging is intolerable' and that the present controversy must be resolved. A majority of the Commission favors legislation 'granting carefully circumscribed authority for electronic surveillance to law enforcement officers.'

"We should never forget the price we must pay if the enemies of society are permitted to operate without fear of detection. The Commission appointed to investigate the facts relating to Pearl Harbor, of which Mr. Justice Roberts was chairman, noted in its

report, filed in January 1942, that the restrictions then in effect prevented resort to 'certain methods of obtaining the content of messages transmitted by telephone or radio-telegraph over the commercial lines operating between Oahu and Japan' and that the contents of the messages sent just prior to Dec. 7, 1941, might have furnished valuable information.

"It concluded that among the causes which contributed to the success of the Japanese attack were 'restrictions which prevented effective counter-espionage.'

"Today there are too many enemies within the country in the ranks of organized crime who can operate almost at will because we have denied to law enforcement the necessary means of detection.

"The Congress should legalize the use of evidence secured by electronic surveillance, under such safeguards as [this bill] proposes, as a necessary measure in the war against organized crime."

NOTICE OF HEARINGS ON AID TO LATIN AMERICA

Mr. FULBRIGHT. Mr. President, as chairman of the Committee on Foreign Relations, I announce today that the committee has scheduled a public hearing to receive testimony from Secretary Rusk on Senate Joint Resolution 53, which relates to President Johnson's message recommending that Congress approve a commitment to increase our aid to Latin America by up to \$1.5 billion over the next 5 years. The hearing will be held at 10 a.m. on Friday, March 17, in room 4221, in the New Senate Office Building.

In addition, Chairman FULBRIGHT announced that on Tuesday, March 21, the committee will hear several executive branch and public witnesses on S. 1030, a bill dealing with the U.S. informational media guaranty program. This hearing will also be held in room 4221, in the New Senate Office Building, beginning at 10 a.m.

ADDRESSES, EDITORIALS, ARTICLES, ETC., PRINTED IN THE APPENDIX

On request, and by unanimous consent, addresses, editorials, articles, etc., were ordered to be printed in the Appendix, as follows:

By Mr. METCALF:

Letter containing Impressions of Job Corps program, written by Robert A. Bailey to Donn Peden, editor, and published in the Meagher County News, White Sulphur Springs, Mont., on October 6, 1966.

AIR POLLUTION IN WASHINGTON AND THE HOPFENMAIER ODORS

Mr. SYMINGTON. Mr. President, those who over the years have opposed home rule for the District of Columbia apparently do so with the premise that the present setup is better for the people of this city.

Maybe so.

The other day the press carried a story that Washington currently has the dubious honor of running fourth in polluted air among all American cities.

Those of us who live in or around Georgetown have firsthand knowledge of this disgraceful condition in our Nation's

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Capital, because for many years, without success, we have tried to have something done about the almost unbelievable smells which come from the Hopfenmaier Rendering Co., at 3300 K Street NW., any day or night the wind blows the odor over Georgetown.

The Hopfenmaier people cook old horses, bone scraps, grease, anything to obtain the desired residual and a profit; to the point where the smell is so unbearable that some people have left the neighborhood and others have been "rendered" ill.

The smell is so bad that the plant next to the Hopfenmaier plant has a sign on it. "The objectionable odors you may notice in this area do not originate in this plant."

We have protested this condition for years. All we get are words, never any action.

As example, in 1964 we received a memorandum from District of Columbia Director of Public Health, Murray Grant, written to the District Commissioners, which says in part:

The Hopfenmaier Rendering plant has been a source of objectionable odors in its present Georgetown location for eighty years, and has engendered mounting community complaints during the past twenty years.

The memorandum also states:

The Department of Public Health is evaluating the present contribution by the plant of objectionable odors in the Georgetown area in the light of recent improvements. Using the evaluation as a guide, the plant will be required to take all further steps that are technically and economically feasible to minimize odors from its processing.

This statement meant exactly nothing, because last week this air pollution, as expressed by this disgusting odor, was worse than ever.

Under the normal local self-government of any city, how long do the Members of the Senate believe this condition would be allowed to continue?

I shall have more to say about this unwarranted condition. In the meantime, I ask unanimous consent that the memorandum in question, dated July 21, 1964, written by Dr. Murray Grant, Director of Public Health, be inserted at this point in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

GOVERNMENT OF THE DISTRICT OF COLUMBIA, DEPARTMENT OF PUBLIC HEALTH,

Washington D.C., July 21, 1964.

Memorandum to: The Commissioners, District of Columbia.

Through: Commissioner John B. Duncan.

From: Murray Grant, M.D., D.P.H., Director of Public Health.

Subject: Hopfenmaier Rendering Company, 3300 K Street NW.

The subject company processes fat and bone scraps from supermarkets in the metropolitan Washington area extending out over a radius of 50 to 75 miles. It also processes grease from restaurants in the same area. The company operates six days per week around the clock from 9:00 a.m. Monday morning until 11:00 p.m. Saturday evening and estimates that it handles approximately 12,000 pounds of product per day. On occasion it operates on Sunday as necessitated by production demands.

The process consists of cooking fat, bone scraps and grease and at the appropriate

time drawing off tallow, used in the soap industry, and solid residual matter, used as a high protein additive to animal feeds.

As is well known the rendering of fats produces strong objectionable odors particularly when the material being processed is putrid. Throughout the country much effort has been made during the past few years to reduce the odors from such processes. These efforts have met with varying degrees of success, never, however, to the complete satisfaction of neighbors downwind from such plants during adverse atmospheric conditions.

The Hopfenmaier Rendering plant has been a source of objectionable odors in its present Georgetown location for eighty years and has engendered mounting community complaints during the past twenty years.

Twelve months ago the company agreed to make substantial changes to its plant facilities providing for the mechanization of handling facilities for both raw materials (fat, bone and grease) as well as finished product (tallow and solid residual matter). It also agreed to make improvements, if found necessary, to existing odor removal equipment for cooking vapors consisting of water cooled condensers to remove condensable odors and a combustion process for the removal of non-condensable odors.

To date the plant has expended \$125,000 on a \$150,000 program to provide enclosed conveyors, holding tanks, drum washing facilities and other associated improvements all directed toward a more efficient handling of materials leading to a reduction of in-plant odors and at the same time reducing cooking odors which are aggravated when the raw material is allowed to age and putrefy.

At the present time, the Department of Public Health is evaluating the present contribution by the plant of objectionable odors in the Georgetown area in the light of recent improvements. Using the evaluation as a guide, the plant will be required to take all further steps that are technically and economically feasible to minimize odors from its processing.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent that the distinguished Senator from Missouri be granted 3 additional minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD of West Virginia. Mr. President, will the Senator yield?

Mr. SYMINGTON. I am happy to yield to the distinguished Senator from West Virginia.

Mr. BYRD of West Virginia. Will the Senator from Missouri state to the Senate whether or not he has upon any previous occasion protested to the president of the Board of Commissioners?

Mr. SYMINGTON. I have so protested. And may I say to the able Senator from West Virginia that the memorandum which I just placed in the RECORD was sent to me by Mr. Tobriner, the Chairman of the Washington, D.C., Board of Commissioners.

Mr. BYRD of West Virginia. What is the date of the memorandum?

Mr. SYMINGTON. The date of the memorandum is July 21, 1964.

Mr. BYRD of West Virginia. This memorandum was dated over 2½ years ago.

Mr. SYMINGTON. The Senator is correct.

The reason why the head of the Washington, D.C., Commissioners sent the memorandum to me was that on some unfortunate days and nights of the

week back in 1964—in April, as I recall—it was impossible for the citizens of this area to keep their windows open. They had to go indoors and close their windows.

Mr. BYRD of West Virginia. The memorandum states, as I recall hearing it read on the Senate floor today, that all feasible steps would be taken to ameliorate the condition. Is my understanding correct?

Mr. SYMINGTON. The Senator is correct.

Mr. BYRD of West Virginia. What steps, if any, have been taken, so far as the Senator from Missouri knows?

Mr. SYMINGTON. I know of no steps. No effective steps could have been taken, because last week these odors were as bad as they have ever been.

Mr. BYRD of West Virginia. Mr. President, I say to the Senator from Missouri that I am interested in this matter. The Senator from Missouri has spoken to me earlier today about it. It is my intention to open hearings on the District of Columbia appropriations bill for the fiscal year 1968 on this coming Friday. The Commissioners will appear on Friday morning, and it is my intention to ask the Commissioners about this matter, to determine what steps have been taken and, if no steps have been taken, to inquire as to what steps can and will be taken.

I thank the Senator for bringing the matter to the attention of the Senate.

Mr. SYMINGTON. I deeply appreciate the position of the acting majority leader in this matter. As chairman of the Subcommittee of the District of Columbia of the Committee on Appropriations he could have much more influence and effect in trying to correct this problem for literally hundreds of our citizens than could I. I am grateful for the comments of the Senator on the floor of the Senate this morning.

Mr. BYRD of West Virginia. I thank the Senator.

CRIME AND IDEOLOGY

Mr. TALMADGE. Mr. President, a very perceptive editorial is published today in the Wall Street Journal entitled "Crime and Ideology." I commend the editorial to the attention of Senators.

Mr. President, I ask unanimous consent that the editorial may be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Mar. 14, 1967]

CRIME AND IDEOLOGY

Citizens worried about mounting crime can thank a Senate Judiciary subcommittee for taking testimony of how recent Supreme Court decisions have hampered law enforcement, an issue which the Administration's touted anti-crime crusade has pointedly avoided.

The practical effects of these decisions, several commentators make clear, are ominous. They give the criminal so much leeway even a self-confessed murderer can go free. Beyond that, we're convinced, an analysis of the philosophy the decisions reflect would tell the nation a good deal about its crime problem.

The Judiciary subcommittee under Senator McClellan, heard Philadelphia District At-